

May 24, 2011 - EPA role in the Delta

EPA has two main roles in Delta issues, both of which are reflected in the Interim Federal Action Plan of December 2009:

1. We are evaluating the effectiveness of Clean Water Act programs protecting aquatic resources in the Delta.

- This is being done first through our ongoing technical and financial assistance to and oversight of the State and Regional Water Board's activities, including implementation of their multi-faceted "Strategic Workplan for the Bay-Delta". Of particular significance, in December, the State issued a revised NPDES permit to the Sacramento Regional County Sanitation District requiring upgraded treatment to deal with, amongst other things, ammonia discharges. Recent research links ammonia discharges to negative effects on Delta fisheries and this POTW is the largest source of ammonia to the Delta. Region 9 funded studies to support the permit decision, commented in support of the State's draft permit and help unify the federal agencies in support of the State's controversial permit decision, which is expected in December.

- In February, Region 9 issued an Advanced Notice of Proposed Rulemaking to solicit scientific and policy input on the application of EPA programs to Delta water quality issues. The ANPR discusses water quality impacts to Delta aquatic life, including ammonia, selenium, pesticides, emerging contaminants and parameters restricting estuarine habitat and migratory corridors (i.e., salinity and temperature). It also discusses the current state of water quality regulation for these constituents. Following our synthesis of public comment on the ANPR (we received input from about 60 commenters), Region 9 will produce a report with findings /recommendations for further action.

- As a significant deficiency in water quality regulation and improvement in the Delta is the lack of sufficient data to adequately assess and rectify water quality problems, Region 9 and the Water Boards have been working with other agencies and stakeholders to develop Regional Monitoring Programs for the Delta and San Joaquin River Basin.

2. We are participating in the Bay Delta Conservation Plan (BDCP), which is led on the federal side by DOI and Commerce.

- As the BDCP is an ESA vehicle, EPA does not have a direct role either as a regulator or as an applicant. Nevertheless, we have several potential roles in implementation of a BDCP.

- First, under CAA Section 309, we will be reviewing and commenting on any

NEPA documentation for the BDCP.

- Second, EPA shares permitting responsibilities under CWA Section 404 with the Corps.

- Third, EPA continues to have an interest in how changes in Delta hydrology caused by BDCP implementation will affect attainment of water quality standards and implementation of TMDLs in the Delta. Changes in the WQCP to water quality standards will require EPA review and approval under CWA Section 303.

Given these roles, we have signed on as Cooperating Agencies for the BDCP EIS/EIR process, and we are working with the Corps and the lead agencies to develop a NEPA/404 MOU. Commitments in this will lead to a greater EPA investment in reviewing BDCP products for their adequacy under the CWA and NEPA.

- Given that there has been very little definitive material released for review, we haven't had much opportunity to form an institutional impression about the direction of the BDCP. We have flagged, and continue to be concerned about, a potential disconnect between the apparent direction taken by the BDCP process of increasing diversions out of the Delta and the direction taken by the State Water Board (and supported by many scientists), which has identified a need for reduced diversions to protect aquatic resources. We recognize that neither the State Water Board process nor the BDCP process has made any final conclusions, but we are concerned that these processes are out of synch.